

**STAFF MEETING MINUTES
LANCASTER COUNTY BOARD OF COMMISSIONERS
COUNTY-CITY BUILDING
ROOM 113
TUESDAY, JULY 13, 1999
2:30 P.M.**

Commissioners Present: Kathy Campbell, Chair
Bob Workman
Linda Steinman
Larry Hudkins
Bernie Heier

Others Present: Kerry Eagan, Chief Administrative Officer
Diane Staab, Deputy County Attorney
Dave Johnson, Deputy County Attorney
Larry Worrell, County Surveyor
Mike DeKalb, Planning Department
Jennifer Dam, Planning Department
Vince Mejer, Purchasing Agent
Steve Huggenberger, Assistant City Attorney
Ann Taylor, County Clerk's Office

AGENDA ITEM

**1 UPDATE ON MASTER TELECOMMUNICATIONS ORDINANCE AND
PERSONAL WIRELESS COMMUNICATIONS ORDINANCE - Tom Duchen
and Tom Creighton, Telecommunications Consultants**

Tom Duchen, Telecommunications Consultant, stated that recent federal court action with regards to a telecommunications ordinance in Prince George County, Maryland may restrict efforts to enact Model Telecommunications Ordinances, although that ordinance was more aggressive in scope than the ordinances proposed for Lincoln and Lancaster County.

Duchen stated that drafts of a Personal Wireless Ordinance that addresses the location of antennas and cellular towers and a Model Telecommunications Ordinance that addresses right-of-way management, franchise licenses and permits, fee recovery issues, construction standards and public health, safety and welfare standards will be mailed to industry providers. He noted that a meeting is also scheduled with industry providers on Tuesday, July 20th. Industry concerns with regards to recent court cases and LB 496, which changed right-of-way for telecommunications lines and related facilities and eminent domain powers, are anticipated.

Tom Creighton, Telecommunications Consultant, said the proposed Personal Wireless Ordinance will not be as susceptible to the recent federal court cases and was drafted in a broad, far-reaching manner that will probably undergo some modification. He noted that industry issues will focus on policy and suggested strong coordination between the City and County.

Creighton noted that with regards to the Model Telecommunications Ordinance, the industry has always maintained that governmental entities may only recover expenses related to regulation and maintenance of rights-of-way. He noted that industry providers typically oppose efforts to seek information about the providers and type of services in the rights-of-way, viewing this as proprietary information.

Dave Johnson, Deputy County Attorney, indicated that he had researched the issue of whether the County has legal authority to charge for use of rights-of-way and will be submitting a formal opinion to the Board in the near future.

Johnson also recommended a review of Resolution 5296 and the agreement with Cablevision.

Eagan noted that a crucial question is whether the County is covered by LB 496, which changed right-of-way for telecommunications lines and related facilities and eminent domain powers.

Duchen stated that the Cable Act of 1984, as amended by the Cable Act of 1992, and the Telecommunications Act of 1996 make it clear that municipalities have the right to charge franchise fees to cable companies, and to the extent that there is ambiguity in LB 496, he believes the federal law would preempt that legislation, with respect to cable operators.

Duchen stated industry providers will be provided a brief period of time in which to submit written comments with regards to the proposed ordinances. Duchen and Creighton will meet with the County Board and staff on August 25th to review those comments and discuss changes. Modifications to the proposed ordinances are anticipated to be completed by September 3rd. An additional meeting with industry providers could be held at that time, if deemed necessary.

Jennifer Dam, Planning Department, explained that this schedule will allow the Personal Wireless Ordinance to be submitted to the Planning Commission by September 9th for scheduling of a public hearing on October 6th. The City Council and County Board could then hold public hearings on October 25th and 26th.

Campbell requested that it be clearly indicated to industry providers that this is a joint City/County effort.

MOTION: Steinman moved and Heier seconded to authorize a meeting with industry providers on Tuesday, July 20th to discuss the proposed Personal Wireless Ordinance and Model Telecommunications Ordinance. On call Steinman, Heier, Workman, Hudkins and Campbell voted aye. Motion carried.

Eagan noted that additional direction is needed from the Board with regards to development of Personal Wireless Ordinance priorities.

Dam briefly reviewed options for location of towers and antennae.

Duchen noted that locating towers on public property will afford the County greater control, particularly with regards to the issue of tower abandonment.

In response to question from Steinman, Creighton stated incentives could be offered to providers to encourage optimal placement or co-location on towers.

Eagan noted that the County may also wish to establish a "No Tower Zone" to preserve Capitol environs district views.

By direction of the Chair, the meeting was adjourned.

Bruce Medcalf
Lancaster County Clerk